

## **ARTICLE 6-02**

### **AERONAUTICS COMMISSION**

Chapter	
6-02-01	Practice and Procedure
6-02-02	Aerial Applicators
6-02-03	Airport Runway Approach Hazards
6-02-04	Intrastate Air Carriers

#### **CHAPTER 6-02-01 PRACTICE AND PROCEDURE**

Section	
6-02-01-01	General Provisions
6-02-01-02	Liberal Construction
6-02-01-03	Suspension of Chapter
6-02-01-04	Definitions
6-02-01-05	Case Numbers and Title
6-02-01-06	Personal Appearances
6-02-01-07	Practice Before the Commission
6-02-01-08	Parties
6-02-01-09	Investigation on Commission's Own Motion
6-02-01-10	Informal Complaint
6-02-01-11	Formal Complaints
6-02-01-12	Answers
6-02-01-13	Application
6-02-01-13.1	Denial of Application or Suspension or Revocation of Authorization, Permission, Certificate, or License
6-02-01-13.2	Immediate Suspension or Revocation of Common Carrier Certificate
6-02-01-14	Intervention
6-02-01-15	Extensions of Time
6-02-01-16	Amendments
6-02-01-17	Withdrawal of Pleading
6-02-01-18	Motions
6-02-01-19	Prehearing Conferences
6-02-01-20	Conference Results Stipulated
6-02-01-21	Consolidation
6-02-01-22	Notice
6-02-01-23	Waiver of Hearing - Shortened Procedure
6-02-01-24	Continuance
6-02-01-25	Examiners
6-02-01-26	Appearance
6-02-01-27	Order of Procedure
6-02-01-28	Appeal to Commission from Ruling of Examiner - Offer of Proof
6-02-01-29	Oral Argument
6-02-01-30	Briefs

6-02-01-31	Evidence
6-02-01-32	Witnesses
6-02-01-33	Subpoena
6-02-01-34	Depositions
6-02-01-35	Stipulations
6-02-01-36	Documentary Evidence
6-02-01-37	Exhibits
6-02-01-38	Official Notice
6-02-01-39	Petition to Reopen
6-02-01-40	Petition for Rehearing
6-02-01-41	Appeal

**6-02-01-01. General provisions.** The principal office of the North Dakota aeronautics commission shall be located at Bismarck, North Dakota. The commission shall be considered as continually in session. All papers and communications forwarded to the commission shall be addressed to:

North Dakota Aeronautics Commission  
Box U  
Bismarck, North Dakota 58505

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-02. Liberal construction.** This chapter shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-03. Suspension of chapter.** The commission reserves the right to suspend, either upon its own motion or upon the motion of any party, the operation of or necessity for compliance with any rule of procedure or part thereof, upon due notice to all parties, whenever the public interest or the interest of any party to a proceeding will not be substantially prejudiced thereby.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-04. Definitions.** As used in this chapter, except as otherwise required by the context:

1. "Commission" and "commissioner" means the North Dakota aeronautics commission, and a member thereof, respectively.
2. "Commission's staff" means the commission's experts, employees, and attorney.

3. "Common air carrier" means any association, person, firm, corporation, or agency engaged or employed in any business that comes under the general jurisdiction of the commission.
4. "Examiner" means any one or more of the members of the commission duly designated, or one or more trial examiners appointed according to law and duly designated to preside at hearings or conferences.
5. "Participant" means any party or person admitted by the commission to participate in a proceeding, including the commission's staff.
6. "Person" means any individual, partnership, corporation, and association or organized group.
7. "Secretary" means the secretary or office of the secretary of the commission.
8. "Tariff" means any rate, joint rate, fare, toll, schedule, classification, contract, practice, rule, regulation, or service which is required by law to be filed with the commission.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-05. Case numbers and title.** Each matter coming formally before the commission will be known as a case and shall be given a docket number and title, descriptive of the subject matter. Such number and title shall be used on all papers in the case, and as far as possible, any communication to the commission in any particular case shall bear the number of the case.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-06. Personal appearances.** Participants may appear in any proceeding in person or by an attorney or other qualified representative. An individual may appear in the individual's own behalf, a member of a partnership may represent the partnership, a bona fide officer or duly authorized employee of a corporation, association, or organized group may represent the corporation, association, or group, and an officer or employee of a state agency, a department or political subdivision of the state, or other governmental authority may represent the state agency or the department or the political subdivision of the state or other governmental authority in any proceeding.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-07. Practice before the commission.**

1. **Person in own interest.** Any person may appear before the commission in the person's own right if the person has a bona fide interest in the subject matter of the proceeding.
2. **Attorneys.** Attorneys at law who are admitted to practice before the courts of the state of North Dakota may represent any party to a proceeding. Any member of the bar of another state may be permitted by the commission to appear in and conduct a cause or matter while retaining residence in another state.
3. **Other persons.** Any other person who shall file proof to the satisfaction of the commission that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the commission.
4. **Rules of conduct.** All persons appearing before the commission or an examiner must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

#### **6-02-01-08. Parties.**

1. **Applicant.** In proceedings involving applications for permission or authorization which the commission may give under statutory or other authority delegated to it, the parties on whose behalf the applications are made are styled applicants.
2. **Complainant.** Persons who complain to the commission of anything done or omitted to be done in contravention or violation of the provisions of any statute or other delegated authority administered by the commission, or any orders or regulations issued or promulgated thereunder, or any other alleged wrong over which the commission may have jurisdiction are styled complainants.
3. **Intervenor.** Persons petitioning to intervene when admitted as a participant to a proceeding are styled intervenors. Admission as an intervenor shall not be construed as recognition by the commission that such intervenor might be aggrieved by any order of the commission in such proceeding.
4. **Petitioner.** Persons seeking relief, not otherwise designated herein, are styled petitioners.
5. **Protestant.** Persons objecting on the grounds of private or public interest to the approval of an application, petition, motion, or other matter which the commission may have under consideration are styled protestants.

6. **Respondent.** Persons subject to any statute or other delegated authority administered by the commission to whom an order or notice is issued by the commission instituting a proceeding or investigation on its own initiative and persons subject to any statute or other delegated authority administered by the commission or any rule, order, or regulation issued or promulgated thereunder against whom any complaint is filed are styled respondents.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-09. Investigation on commission's own motion.** The commission may at any time, upon its own motion, or upon the complaint of any person, institute investigation proceedings and order hearings in any action or thing done or omitted to be done by any common air carrier, or party under its jurisdiction which the commission may believe is in violation of the law or of any order, rule, or regulation of the commission. The commission may, through its staff or otherwise, secure and present such evidence as it may consider necessary or desirable in any proceeding in addition to the evidence presented by the parties.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-10. Informal complaint.** Informal complaints may be made orally or in writing addressed to the commission. Letters to the commission will be considered as informal complaints. Matters thus presented will be handled by correspondence or by other informal communications, or by conference with the party or parties complained of, or by formal investigation instituted by the commission upon its own motion, or in such other manner as the commission shall deem to be appropriate and warranted by the facts and the nature of the complaint in an endeavor to bring about satisfaction of the complaint without formal hearing. Complaints with respect to the tariffs, fares, and charges of any intrastate common air carrier, if made by letter, may be considered as an informal complaint.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-11. Formal complaints.**

1. Complaints may be made by the commission on its own motion or by any corporation, person, chamber of commerce, board of trade, civic, commercial, mercantile, traffic, agricultural, manufacturing association, or organization, body politic, or municipal corporation, by complaint in writing setting forth any act or thing done or omitted to be done by any intrastate common air carrier in violation or claimed to be violation of any provision of law or of any order, rule, or regulation of the commission, and requesting a public hearing of same. Any intrastate common air carrier shall have the right to complain on any grounds upon which complaint may be made by other parties.

2. Each formal complaint shall show the venue "before the North Dakota aeronautics commission" and shall contain a heading showing the name of the complainant and the name of the respondent and will bear the name and address of each complainant's attorney, if any. The complaint shall be so drawn as to fully and completely advise the respondent and the commission of the facts constituting the ground of the complaint, the provisions of the statutes, rules, regulations, and orders relied upon involving the authority of the commission, the injury complained of, and shall contain a clear, concise statement of the relief sought.
3. All formal complaints shall be verified under oath by the person filing the complaints, or officer or other person having knowledge of the facts set forth.
4. At the time the complainant files the original complaint, the complainant must also file copies thereof equal in number to five more than the number of respondents named in the complaint.
5. The commission shall serve a true copy of the complaint and notice for hearing upon the respondent personally, or by registered mail, as the commission may direct, at least forty-five days before the time specified for hearing thereof unless the service of such complaint or notice of hearing is waived, in writing, by the respondent, or unless the parties agree upon a definite time and place for hearing thereof with the consent of the commission. However, in case of an emergency the commission, in its discretion, may notice a proceeding for hearing upon its merits upon less than forty-five days' notice.
6. If the respondent desires to satisfy the complaint, the respondent may file with the commission, within five days after the service of the complaint, a statement of the relief which the respondent is willing to give. The commission shall immediately forward a copy thereof to the complainant. If, in the complainant's opinion, the satisfaction meets the complaint, the complainant shall make written request to the commission that the complaint be dismissed. The request shall be forwarded to the commission not less than ten days prior to the time of the hearing. If the complainant is of the opinion that the satisfaction does not meet the complaint, the complainant shall so notify the commission, whereupon the commission shall notify the respondent that the latter must answer the complaint within twenty days after service or within a reasonable time determined by the commission before the hearing.
7. Upon the filing of a formal complaint, the commission shall examine same to ascertain whether or not it states a prima facie case and conforms to this chapter. If the commission finds that the complaint does not state a prima facie case or does not conform to this chapter, it shall notify the complainant or the complainant's attorney to that effect, and the complainant shall be given an opportunity to amend within a

specified time. If the complaint is not so amended within such time or extension thereof as the commission may grant for good cause shown, it will be dismissed. The filing of an answer will not be deemed an admission of the sufficiency of the complaint, but a motion to dismiss may be made at the hearing.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-12. Answers.**

1. Each answer filed with the commission shall contain the correct title of the proceeding, the name and address of each answering party, a specific denial of such material allegations of the complaint as are controverted by the respondent, and a statement of any new matter which may constitute a defense. If the answering party has no information or belief upon the subject, sufficient to enable the answering party to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground.
2. An answer must be signed and verified by the respondent filing the answer.
3. The original answer and five copies thereof must be filed with the director of the commission, and at the same time, a copy of the answer shall be served personally, or by registered mail, upon each complainant or complainant's attorney by the respondent making the answer. The respondent shall certify to the director that the service has been made.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-13. Application.** An application is a proceeding seeking authorization or permission which the commission may give under statutory or other delegated authority administered by it.

1. All applications shall be in writing and under oath shall set forth the full name and post-office address of the applicant, shall state clearly and concisely the authorization or permission sought, and shall cite by appropriate reference the statutory provision or other authority under which commission authorization or permission is sought.
2. Every application will be signed and verified by the party filing the application.
3. At the time the original application is filed, five additional copies thereof must also be filed.

4. Corporations. If the applicant is a corporation, a certified copy of its articles of incorporation shall be annexed to the application. If the applicant's articles of incorporation have already been filed with the commission in some prior proceeding, it shall be sufficient if this fact is stated in the application and reference is made of the subject matter and number of the prior proceeding.
5. Whenever the commission shall require the filing of a financial statement by any intrastate common air carrier, this statement shall be prepared as of the last day of the most recent calendar quarter, except, where possible, a more recent date may be submitted. Such financial statements shall include:
  - a. A balance sheet of the form and style usually followed in the particular industry. Sufficient detail should be included so as to provide the following information (separate schedule showing the detail may be used if preferred):
    - (1) Amount and kinds of stock authorized.
    - (2) Amount and kinds of stock issued and outstanding.
    - (3) Terms of preference of preferred stock, whether cumulative or participating, preferred as to dividends, assets, or otherwise.
    - (4) A brief description of each mortgage showing the amount, date of maturity, rate of interest, and name of mortgagee or trustee.
    - (5) Number and amount of bonds authorized, and number and amount issued, giving the name of the company or corporation which issued the same, describing each class separately, and giving date of issue, par value, rate of interest, date of maturity, and how secured.
    - (6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, and in whose favor.
    - (7) Other indebtedness, giving detail by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by any person or corporation if the original liability has been transferred, together with the amount of interest paid thereon during the year terminated by the balance sheet.
  - b. An income statement of the form and style usually followed in the particular industry and covering the twelve-month period the balance sheet terminates.



- c. A schedule showing a detail of the interest and dividends paid during the period covered by the income statement.
6. The application must include a statement of passenger traffic potential and a summary of research utilized to develop marketing and business plans to ensure profitability.
7. All applications must be submitted on forms approved by the commission.

**History:** Amended effective March 1, 1990.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-13.1. Denial of application or suspension or revocation of authorization, permission, certificate, or license.** The commission may, after notice and hearing, deny an application or suspend or revoke an existing authorization, permit, certificate, or license for just cause. Acts or omissions of an applicant or holder of an authorization, permit, certificate, or license constituting just cause may include:

1. The failure to pay such fees or file a bond as is required by law or this title;
2. The failure to provide information to the commission as required by law or this title;
3. A violation of a rule, procedure, or standard in this title or North Dakota Century Code title 2;
4. Commission of a fraud or the making of a knowing misstatement in an application, in information submitted to the commission, or in a proceeding before the commission; or
5. If the issuance of a common carrier certificate for authority to operate as an intrastate air carrier is not in the best interest of the development and coordination of aeronautical activities in the state. In determining the best interest of the development and coordination of aeronautical activities in the state, the commission shall consider, but not be limited to, routes and service of the proposed intrastate air carrier and existing air carriers, the present and future impact upon air service to the communities affected by the application, the present and future air service needs of the state of North Dakota, the safety of the public, and the financial responsibility of the air carrier.

**History:** Effective March 1, 1990.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-13.2. Immediate suspension or revocation of common carrier certificate.** Notwithstanding other provisions of this title, the commission may, without prior notice or hearing, suspend or revoke a common carrier certificate upon receipt of notification that the federal aeronautics administration has determined or declared the carrier to be unfit to operate a common carrier service under the provisions of 14 CFR, part 121 or 135. Notice of the commission's action must be immediately given to the carrier and the carrier, upon its request, is entitled to a hearing concerning such action. The commission may suspend all or a part of the rules in this title if, in its discretion, compliance with the rule or rules to be suspended will unreasonably delay the hearing authorized under this section.

**History:** Effective March 1, 1990.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-14. Intervention.** In any formal proceeding, any person having a substantial interest in the subject matter of any proceeding may petition for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this section. In general, such petitions will not be granted unless it shall be found that such person has a statutory right to be made a party to such proceedings or that such person has a property or financial interest which may not be adequately represented by existing parties, and such intervention would not unduly broaden the issues or delay the proceeding.

1. A petition for leave to intervene shall be in writing, unless made at the commencement of a hearing, and must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. A petition for leave to intervene in any proceeding shall be filed prior to or at the commencement of the hearing, but not after, except for good cause shown.
3. The petitioner shall furnish a copy of the petition to each party to the proceeding and shall furnish the commission with the original and five copies thereof.
4. Admission as an intervenor shall not be construed as recognition by the commission that such intervenor might be aggrieved by an order of the commission in such proceeding.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-15. Extensions of time.** A request for an extension of time in which to perform an act required or allowed to be done at or within a specified time by any rule, regulation, or order of the commission shall be, by written motion, timely filed with the commission, stating the facts on which the motion rests and conforming

to the provisions of section 6-02-01-18. Such extensions of time will be granted or denied by the commission in its discretion.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-16. Amendments.** The commission may, in its discretion, after notice to the other parties to a proceeding, allow any pleading to be amended or corrected or any omission therein to be supplied; provided, that if any such amendment, when allowed, so alters or broadens the issues that it appears proper, the commission may permit any party affected thereby a reasonable time to prepare to meet the changed issues.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-17. Withdrawal of pleading.** A participant desiring to withdraw a pleading filed with the commission may file a notice of withdrawal thereof with the commission. The notice shall set forth the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other participants to the proceeding and a certificate of service to that effect filed with the notice of withdrawal. This section shall not be construed as allowing, without express permission of the commission, withdrawal of any pleading in any proceeding in which a hearing has been held or convened.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-18. Motions.** After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired. All other motions shall be in writing and shall be served on the other parties to the proceeding by the moving parties.

1. The commission may, in its discretion, set any motion for oral argument.
2. The examiner designated to preside at a hearing is authorized to rule upon any motion not formally acted upon by the commission prior to the commencement of the hearing wherein the immediate ruling is essential in order to proceed with the hearing and upon any motion filed and made after the commencement thereof and prior to the decision in the proceedings. However, no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon by an examiner.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-19. Prehearing conferences.**

1. In order to provide an opportunity for a settlement of a proceeding, or any of the issues therein, there may be held at any time prior to or during hearings before the commission or an examiner such informal conferences of parties for the admission and consideration of facts, arguments, offers of settlement, or proposals of adjustments as time, the nature of the proceeding, and the public interest may permit.
2. To expedite the orderly conduct and disposition of any hearing, at such prehearing conferences as may be held, there may be considered, in addition to any offer of settlement or proposals of adjustment, the possibility of the following:
  - a. The simplification of issues.
  - b. The necessity or desirability of amendment to the pleadings.
  - c. The exchange and acceptance of service of exhibits proposed to be offered in evidence.
  - d. The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which may properly shorten the hearing.
  - e. The limitation of the number of witnesses.
  - f. Such other matters as may properly be dealt with to aid in expediting the orderly conduct of the proceeding.
3. The commission, with or without motion, may direct that a prehearing conference be held. Upon motion by a party, the examiner may direct the parties to such proceedings to appear for a prehearing conference to consider the matters outlined in subsection 2. Due notice of the time and place of such conference will be given to all parties to the proceeding.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-20. Conference results stipulated.** Upon conclusion of a prehearing conference, the parties shall immediately reduce the results thereof to the form of a written stipulation which recites the matters agreed upon, and the original and five copies thereof shall be filed with the commission. Any such stipulation may be received in evidence at a hearing and, when so received, shall be binding on the parties with respect to the matters therein stipulated.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-21. Consolidation.** The commission, upon its own motion, or upon motion by any party, may order two or more proceedings involving a similar question

of law or facts to be consolidated for hearing where rights of the parties and the public interest will not be prejudiced by such procedure.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-22. Notice.** In those proceedings in which a hearing is to be held, the commission will, by order or otherwise, assign a time and place for hearing. Notice of the hearing will be posted in the office of the commission, and will be served upon the parties and such other persons that may be entitled to receive notice at least forty-five days prior to the date set for the hearing except in cases of emergency.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-23. Waiver of hearing - Shortened procedure.** In any proceeding in which the commission is authorized to act after opportunity for hearing, such opportunity shall be deemed to have been afforded by service of notice of the application of other initial pleading or filing where the commission fixes a reasonable period of time within which any person desiring to be heard may file a protest or petition for a hearing. Upon the expiration of such period of time, in the absence of a protest or a request for hearing, the commission may forthwith dispose of the matter upon the basis of the pleading and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading shall be deemed to have waived a hearing for the purpose of such decision, but shall not be bound by such waiver for the purposes of an application for rehearing with respect to an order so entered.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-24. Continuance.** After hearings are scheduled, continuances will not be granted by the commission except for good and sufficient cause. A motion for continuance may be made orally at a hearing or in writing, filed with the secretary, and served on opposing counsel or parties. Such motions should be presented as far in advance of date fixed for hearing as possible to ensure favorable action. The commission may effect a continuance upon its own motion.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-25. Examiners.** When evidence is to be taken in a proceeding, either the commission, any member thereof, or one or more of its examiners, when duly designated for that purpose, may preside at the hearing.

1. **Authority.** An examiner duly designated by the commission to preside at a hearing shall have the authority, within the commission's powers and subject to its rules, as follows:

- a. To regulate the course of hearing.
  - b. To administer oath.
  - c. To issue subpoenas.
  - d. To take depositions or cause depositions to be taken.
  - e. To rule upon offers of proof and to receive evidence.
  - f. To hold appropriate conferences before or during hearings.
  - g. To dispose of procedural matters but not to dispose of motions made during hearings to dismiss proceedings or other motion which involves a final determination of proceedings.
  - h. Within the examiner's discretion, or upon direction of the commission, to certify any question to the commission for its consideration and disposition.
  - i. To take any other action necessary or appropriate to discharge the duties vested in the examiner, consistent with statutory or other authorities under which the commission functions, and with the rules, regulations, and policies of the commission.
2. **Limitations.** Examiners shall perform no duties inconsistent with their responsibilities as such. No examiner shall in any proceeding for an adjudication required by statute to be determined on the record after opportunity for hearing consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-26. Appearance.** Interested parties shall enter their appearances at the beginning of the hearing by giving their name and address and briefly stating whether they appear in support of the complaint or application or in opposition thereto, or otherwise. All such appearances shall be noted on the record with a notation in whose behalf each appearance is made. Included in such appearances shall be the names of the members of the commission's staff participating in the hearing or investigation.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-27. Order of procedure.** In hearings on formal complaints, petitions, and application, the complainant, petitioner, or applicant, as the case may be, shall open and close. In hearings involving investigation and suspension of rates, tariffs, or schedules, the respondent shall open and close. In hearings

on all other investigations, the examiner may direct who shall open and close. In hearings on an order to show cause, the respondent shall open and close. When proceedings have been consolidated for hearing, the examiner shall designate who shall open and close. Intervenor shall follow the parties in whose behalf the intervention is made. Where the intervention is not in support of an original party, the presiding officer shall designate at which stage such intervenor shall be heard. In proceedings where the evidence is materially within the knowledge or control of another party or participant, the foregoing order of presentation may be varied by the examiner.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-28. Appeal to commission from ruling of examiner - Offer of proof.** An appeal may be taken to the full commission from a ruling of an examiner during the course of a hearing only where extraordinary circumstances necessitate a prompt decision by the commission to prevent detriment to the public interest.

Any offer of proof made in connection with an objection taken to any ruling of the examiner rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-29. Oral argument.**

1. **Before examiner.** When, in the opinion of the examiner, time permits and the nature of the proceedings, the complexity or the importance of the issues of fact or law involved, and the public interest warrant, such examiner may, either on the examiner's own motion or at the request of any party at or before the close of the taking of testimony, allow and fix a time for the presentation of oral argument imposing such limits of time on the argument as deemed appropriate. Such argument shall be transcribed and bound with the transcript of testimony.
2. **Before commission.** Request for authority to present oral argument before the full commission may be made at any time during the hearing, at the conclusion of the taking of evidence, or on brief. The commission will announce and fix the time for oral argument, if allowed.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-30. Briefs.** In all contested cases, briefs may be filed on behalf of any or all parties of interest.

1. Exhibits should not be reproduced in a brief, but may, if desired, be reproduced in an appendix to the brief. Every brief of more than twenty pages shall contain a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages where the citations appear. All briefs shall be as concise as possible.
2. The examiner shall fix the time for the filing and service of briefs, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved. The examiner shall fix the order in which such briefs shall be filed. A brief not filed and served on or before the date fixed therefor will not be accepted for filing except by special permission of the examiner.
3. All briefs shall be accompanied by a certificate showing service upon all parties or their attorneys who appeared at the hearing. Six copies of each brief shall be furnished for the use of the commission unless otherwise directed by the examiner.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-31. Evidence.** The admissibility of evidence shall be determined generally in accordance with the practice in the district courts of this state. The commission or the examiner, however, may waive the usual common law or statutory rules of evidence where such waiver is necessary to ascertain the substantial rights of the public and interested parties. When objection is made to the admissibility of evidence, the examiner may receive such evidence subject to later ruling by the commission.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-32. Witnesses.** Witnesses will be orally examined under oath before the examiner unless their testimony is taken by deposition as provided in section 6-02-01-34. Written testimony of any witness may be received when properly supported by the oral testimony of its author on direct examination subject to cross-examination and motion to strike.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-33. Subpoena.** Subpoena for the attendance of witnesses or for the production of documentary evidence, unless directed by the commission upon its own motion, will issue only upon application in writing to the commission, except that during a hearing, such application may be made orally on the record before the commission or the examiner who shall have the authority to determine the relevancy and the materiality of the evidence sought and to issue such subpoena if warranted. Written application shall specify the general relevance and materiality of the testimony or documentary evidence sought, including, as to documentary



evidence, specifications as nearly as may be of the documents desired and the facts to be proved by them. The cost of serving any subpoena shall be paid by the party requesting it. Any witness who is subpoenaed under the provisions of this section and who appears at the hearing shall receive the same fees and mileage as witnesses in the district courts of this state, and such costs will be paid by the party at whose instance the witness appears. No witness fees will be allowed except on a subpoena.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-34. Depositions.** The deposition of a witness required in any proceeding before the commission may be taken in the same manner and on the same notice as in any action pending in the district court of this state. Any witness whose deposition is taken shall receive the same fees and mileage as a witness in a civil case in the district court, and such costs shall be paid by the party at whose instance the witness's deposition is taken.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-35. Stipulations.** The parties to any proceeding or investigation before the commission may, by stipulation in writing, filed with the commission or orally entered in the record, agree upon the facts, or any portion thereof, involved in the controversy, and such stipulation shall be regarded as used as evidence at the hearings.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-36. Documentary evidence.** Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party must plainly designate the matter so offered. If the other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the examiner directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party offering the same to all parties or their attorneys appearing at the hearing who shall be afforded an opportunity to examine the entire book, paper, or document and to offer in evidence in like manner any portions thereof found to be material and relevant. Any matter contained in a report or other document on file with the commission may be offered in evidence by merely specifying the report, document, or other file containing the matter so offered.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-37. Exhibits.**

1. Exhibits must be on paper of good quality and so prepared as to be plainly legible and durable whether printed, typewritten, mimeographed, photographed, or otherwise, and if possible should be folded to a size not to exceed eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Whenever practicable, the sheets of each exhibit and line of each sheet should be numbered, and if the exhibit consists of five or more sheets, the first sheet or title page should contain a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical example contained in the exhibit. Whenever practicable, documents produced by a single witness shall be assembled and bound together suitably arranged and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be definitely shown.
2. Six copies of each exhibit will be furnished for the use of the commission whenever practical. Copies must also be available for all parties of record in a proceeding.
3. In rate or other proceedings involving detailed and complicated accounting exhibits, the commission may require the applicant to file and serve copies thereof within a specified time in advance of the hearing in order to enable protestants and the commission's staff to study the same and prepare cross-examination with reference thereto.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-38. Official notice.** The commission may take notice of any fact or facts set forth in its duly established regulations, annual reports, official reports of the civil aeronautics board, federal aviation administration, or any statistical data, to which reference is made on the record at the hearing, or any air carrier, or any facts which are judicially noticed by the courts of this state. Official notice will be taken without offer or production of that portion of any tariff or schedule which is the subject matter or an order of investigation or suspension.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-39. Petition to reopen.** At any time after the conclusion of a hearing in a proceeding, but before entering and issuance by the commission of its final order or rule, any party to a proceeding may file with the commission a petition to reopen the proceeding for the purpose of taking additional evidence.

1. The petition shall set forth clearly the facts claimed to constitute the grounds requiring reopening of the proceeding, including the material changes of fact or law alleged to have occurred since the conclusion of the hearing.

2. A copy of the petition to reopen shall be served by the petitioning party upon all parties to the proceedings or their attorneys of record, and a certificate to that effect will be attached to the petition when filed with the commission. The original and five copies must be filed with the commission.
3. Within ten days following the service of any petition to reopen, any other party to the proceeding may file with the commission the party's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.
4. If, after the hearing in a proceeding, either before or after the issuance of its final order, the commission shall have reason to believe the conditions of fact or law have so changed as to require, or that public interest requires, the reopening of such proceeding, the commission will issue an order for the reopening of the proceeding.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-40. Petition for rehearing.**

1. A petition for rehearing of a proceeding must be filed within fifteen days after a copy of the decision has been delivered to the petitioning party by the commission.
2. The petition shall state concisely the alleged errors in the commission's decision or order and the specific grounds relied upon by the petitioner. If an order of the commission is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from the compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.
3. A petition for rehearing shall be served by the petitioner upon all parties to the proceeding or their attorneys of record, and a certificate to that effect will be forwarded to the commission at the time the petition is filed. The original and five copies must be filed with the commission.
4. Within ten days following the service of such petition, any party to the proceeding may file with the commission the party's answer thereto, and in default thereof, shall be deemed to have waived any objection to the granting of such petition.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

**6-02-01-41. Appeal.** Any party to any proceeding heard by the commission may appeal from a decision within thirty days after notice thereof has been given as more fully appears in North Dakota Century Code section 28-32-15.

**General Authority:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16, 28-32-15

**Law Implemented:** NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16, 28-32-15